IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2620 OF 2005

Subhash Mahadeo Chauthai ..Petitioner

Vs.

Yogesh Shamlal Maniar & Ors. ..Respondents

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Mr.Uday P.Warunjikar Advocate for Petitioner
Mr.A.S.Shitole, A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : FEBRUARY 14, 2007

P.C.

1. Heard the learned advocate for the petitioner and the learned A.P.P. for the State. None appears for respondent nos.1 and 2 though served.

2. The petitioner is facing prosecution in three complaints i.e. complaint No.87/SS/2005 which is pending before the learned Addl.Chief Metropolitan Magistrate, 14th Court, Girgaum, Mumbai, in Case No.2344 of 2000 which is pending before the Judicial Magistrate F.C.Vashi, Navi Mumbai, both these cases are under Section 138 of Negotiable Instruments Act, and in Complaint No.3428/S/2003 pending before the learned Addl.Chief Metropolitan

Magistrate 4th Court, Girgaum, Mumbai. The said case is under Section 420 of IPC. The three complaints have been filed against the petitioner by respondent nos.1 and 2. Besides this, respondent nos.1 and 2 and their family members have also filed four civil suits against the petitioner, two of which are pending before the Bombay City Civil Court and two of them are before the Small Causes Court.

3. Mr.Warunjikar has submitted that the petitioner is resident of Pune. However, he has to attend Mumbai for two criminal cases which are pending before the Addl.Chief Metropolitan Magistrate, Girgaum Mumbai and one before the J.M.F.C.Court, Vashi as well as other courts wherein civil suits are filed against him. Hence, it is prayed that all the three criminal cases may be transferred to appropriate Court in Pune.

4. As far as civil cases are concerned, the petitioner need not attend the Court and the said cases can be conducted through his lawyer. Hence, that cannot be a ground for transfer of three criminal cases to Pune. Thereafter, Mr.Warunjikar

submitted that the dates given in the three different courts in the criminal courts are such that they clash and hence, it is not possible for the petitioner to attend the courts at Girgaum as well as Vashi. Hence, on this ground, he has prayed for transfer of three criminal cases to Pune.

5. As far as two cases under Section 138 of N.I.Act are concerned, in my view, the petitioner could get adequate relief if he is exempted from personal appearance in these two cases. In such case, the petitioner would have to attend only one case i.e. case which is under Section 420 of IPC pending before the learned Addl.Chief Metropolitan Magistrate, Girgaum, Mumbai. Mr.Warunjikar submitted that if the petitioner is exempted from personal appearance in the two cases under section 138 of Negotiable Instruments Act, he would not press for transfer of Criminal Case No.3428/S/2003 which is under Section 420 of IPC at this stage.

6. In my view, looking to the fact that the petitioner is being granted exemption from personal appearance in the two cases under Section 138 of

N.I.Act, it would not be necessary to transfer the said criminal cases to Pune. In view of the above, the learned Magistrate shall grant exemption to the petitioner from personal appearance in the two criminal cases which are under Section 138 of N.I.Act, unless the learned Magistrate is of thee opinion that the presence of the petitioner is absolutely necessary on a particular date. In such case, on advance notice being given to the petitioner, he shall attend the Court of the Magistrate on that particular day.

7. Petition is disposed of in the above terms.

[V.K.Tahilramani, J.]